Swann, 25 Md. 173; *State v. Nash*, 66 Oh. St. 612; *State v. Savage*, 64 Neb. 684; and cases cited in *People v. Morton*, 156 N. Y. 136. Some of these assume, though none have been called upon to decide, that the writ could be enforced against the governor, if necessary. *Martin v. Ingham*, 38 Kans. 641; *Magruder v. Swann, supra.* Such authority as has been found is adverse to such a contention. *Thompson v. R. R. Co.*, 22 N. J. Eq. 111 (subpoena); *Hartranft's Appeal*, 85 Pa. 433 (subpoena). See *Burr's Trial*, 182 (subpoena). More often it is assumed that the enforcement of the decree is merely a question of physical, and not legal, inability, and as such an irrelevant consideration in a judicial proceeding. *Cotton v. Ellis*, 52 N. C. 545. By the weight of authority, mandamus will not lie against the chief executive officer. *People v. Governor*, 29 Mich. 320; *State v. Stone*, 120 Mo. 428; *Rice v. Governor*, 207 Mass. 577; *People v. Morton*, 156 N. Y. 136, and cases there cited. This immunity cannot be waived by appearance. *Rice v. Austin*, 19 Minn. 103; *State v. Governor*, 25 N. J. L. 331. *Contra*, see *State v. Board of Inspectors*, 6 Lea (Tenn.) 12; *People V. Bissell*, 19 Ill. 229. Where, however, the question of the jurisdiction of the court is not raised, the court proceeds as if it had authority. *Governor v. Nelson*, 6 Ind. 496. An exception is sometimes made in the case of a function to be performed by the governor as an *ex officio* member of a statutory board. *Gray v. State*, 72 Ind. 567. Cf. *Davis v. Gray*, 16 Wall. (U. S.) 203. By the better view, however, the immunity extends to all duties imposed upon the governor *ex nomine*. *People v. Morton, supra; State v. Frazier*, 114 Tenn. 516. There seems no reason why the process should not issue against the other members of the board, wherever their action, apart from that of the governor, would control. See *People v. Morton*, supra; *State v. Huston*, 27 Okla. 606. But it has been held that process must issue against all the members or none. *McFall v. Board*, 101 Tex. 572. Under our coördinate system of governmental departments, it seems clear that mandamus proceedings against that officer from whose support the court derives all its power to issue compulsory process, are an anomaly, the objection to which has been concisely stated: "Such a judgment would be mere advice, and courts do not advise." *R. R. Co. v. Lowry*, 61 Miss. 102.

MONOPOLY—CONSPIRACY OF MEMBERS OF TRADE UNIONS—CIRCULATION OF UNFAIR LISTS.—LAWLOR V. LOEWE, 59 U. S. (L. Ed.) 170.—*Held*, the circulation of a list of "unfair dealers," manifestly intended to put a ban upon those whose names appear therein among an important body of possible customers, combined with a view to joint action and in anticipation of such reports, is within the prohibition of the Sherman Anti-Trust Act of July 2, 1890 (26 *Stat. at L. 209, chap.* 647), if it is intended to restrain and does restrain commerce among the states.

It has been held that a combination to obtain a monopoly in the manufacture of a necessary is not illegal under the Sherman Anti-Trust Act though it tends indirectly to restrain interstate trade. *U. S. v. E. C. Knight & Co.*, 156 U. S. 1. Harlan, J., *dissenting*. Where the effect of the monopoly is to directly restrain interstate commerce, it

does come within the Sherman Act. *Addyston Pipe & Steel Co. v. U. S.*, 175 U. S. 211; *Swift & Co. v. U. S.*, 196 U. S. 375. Later cases held that every combination in restraint of interstate trade comes within the Anti-Trust Act of July 2, 1890. *U. S. v. Trans-Missouri Freight Association*, 166 U. S. 290; *Northern Securities Co. v. U. S.*, 193 U. S. 197. But this doctrine has been modified by the "rule of reason." *Standard Oil Co. of N. J. v. U. S.*, 221 U. S. 1. Harlan, J., *dissenting; U. S. v. American Tobacco Co.*, 221 U. S. 106. Harlan, J., *dissenting; U. S. v. International Harvester Co.*, 214 Fed. 987. Sanborn, J., *dissenting*. In the Standard Oil case the court said that the legislature "not specifying but indubitably contemplating and requiring a standard, it follows that the standard of reason . . . was intended to be the measure used for the purpose of determining whether in a given case a particular act had or had not brought about the wrong against which the statute provided." The statute covers combinations of labor as well as combinations of capital. *Gompers v. Buck Stove & Range Co.*, 221 U. S. 418; *Montague v. Lowry*, 193 U. S. 38; *Irving v. Neal*, 209 Fed. 471. The circulation by a combination of such information among possible customers which had and was intended to have the natural effect of causing such customers to withhold patronage from the concerns listed, was held to come within the Sherman law. *Eastern States Lumber Co. v. U. S.*, 234 U. S. 600. The opinion has been advanced that the Clayton Bill passed by the 63d Congress, Oct. 15, 1914, has taken labor organizations out of the operation of the Sherman act, but a careful review of the report of the committee shows that that bill merely meant to prevent the construction that associations for increasing wages and bettering terms of employment, where that employment is in interstate commerce, be considered *per se* illegal restraints of trade. The language of the act is that nothing in the anti-trust laws shall be construed to forbid the members of labor organizations from "lawfully carrying out the legitimate objects thereof." This clearly still leaves to the courts the application of a standard, and does not effect the decision of the principal case where the methods were not lawful, and the object was not legitimate.

NEGLIGENCE—CONTRIBUTORY—BURDEN OF PROOF—CARNEY V. BOSTON ELEVATED RY., 107 N. E. (MASS.) 411.—*Held*, the burden is upon the plaintiff, who is engaged in a dangerous occupation, to prove the absence of contributory negligence, in an action against his employer for injuries sustained in the course of that employment.

The doctrine of this case is followed in eleven of the states, while twenty-three states and the Supreme Court of the United States hold the contrary view; namely, that contributory negligence is a matter of defense to be set up and proved by the defendant. See Shearman & Redfield on Negligence (4th Ed.), p. 180. The elements of the plaintiff's position in the principal case seem to be closely analogous to those of the defendants' in cases where the doctrine of *res ipsa loquitur* is applied; where the thing is shown to be under the control of the defendant (plaintiff in this case) or his servants, and the accident is such as in the ordinary course of things does not happen if proper care be